September 13, 2005

Mr. Curtis P. Henderson 215 N. Market Street Wilmington, DE 19801 Francis Farren, Deputy Attorney General Office of the Attorney General 820 N. French Street, 7th floor Wilmington, DE 19801

Re: State of Delaware v. Curtis P. Henderson Case No. 0409013519

> Date Submitted: September 8, 2005 Date Decided: September 13, 2005

LETTER OPINION

Dear Gentlemen:

Trial in the above captioned matter took place on Thursday, September 8, 2005. Following the receipt of evidence and testimony the Court reserved decision. This is the Court's final decision and order.

THE FACTS

The Defendant was charged by Information by the Attorney General with the Criminal Clerk with three misdemeanor counts; one Count Disorderly Conduct allegedly in violation of 11 *Del. C.* §1301, one Count of Menacing purporting violation of 11 *Del. C.* §602; and finally one Count of Criminal Trespass in the Third Degree allegedly in violation of 11 *Del. C.* §821. All the charging documents allege the misdemeanors were allegedly committed in New Castle at 3300 Brandywine Parkway, Wilmington Delaware at the Regal Cinema.

Robert I. Schwartz ("Schwartz") presented testimony at trial. He has been employed at the Regal Cinemas for five (5) years and is the General Manager. He met the defendant at the Regal Cinema. Schwartz confronted the defendant in one of the move theaters and requested that he go back to the theater to which he originally bought a ticket because he believed he was moving theater to theater watching movies for free. The defendant, Curtis P. Anderson ("Anderson" or "defendant") asked Schwartz "Why are you sweating me?" The defendant also asked him "Why are you worried about me?" According to Schwartz the defendant became very belligerent and upset and used profanity such as "F--- this!" At this point Schwartz asked the defendant to remove himself from the theater. The defendant did not leave and became increasingly argumentative. According to Schwartz he thought the defendant was going to hit him because defendant was "leaning towards him" with his "arms up." Because of the physical size of the defendant Schwartz said he was therefore intimidated. Schwartz believed the defendant was very aggressive as he moved his arms while approaching him. According to Schwartz, there were approximately four to five employees present and he told the managers to contact Security and call 9-1-1.

At some point the defendant stopped escalating the incident and defendant returned to the theater that he "was supposed to be in."

On cross-examination Schwartz said it was "a slow night" and he told the defendant, "Come with me please." He asked the defendant for his ticket and agreed that the defendant actually had two tickets. The defendant showed both tickets to Schwartz. Defendant allegedly was cursing near the theater near the bathroom outside the lobby.

On cross-examination Schwartz was asked that if the defendant was acting belligerent and disruptive, then why he told the defendant he could stay at the Regal Theater. Schwartz

indicated to the Court he wanted to "win the defendant back" and although he felt "physically threatened" he tried to accommodate the defendant and keep him as a customer. He therefore conceded he told the defendant he could stay and view the next movie

Trooper Eric Daniels ("Trooper Daniels") of the Delaware State Police from Troop 1 presented testimony. He arrived at the theater and was advised previous to his call that there was a disorderly person in the theater.¹

According to Trooper Daniels the incident occurred on September 16, 2004 at 6:30 p.m. He encountered the defendant in theater 14 and defendant allegedly told him, "It's about time you got here." The officer put his hands on defendant's shoulder and the defendant rose and became very aggressive with his bodily movement and stood up. According to the officer, the defendant told him, "If you touch me it's on." At this point Trooper Daniels told the defendant to leave the theater and he refused and was handcuffed and taken into custody.

On cross-examination he admitted the defendant offered him popcorn and was originally cordial.

The defendant presented his case-in-chief. He arrived on the day in question on the charging document between 5:00 p.m. and 6:00 p.m. The defendant indicated he received permission to view another movie when he had purchased a ticket for the original movie that was not presently running. The defendant was given the express permission by an employee of Regal Cinema to do so. He denies that he was overly aggressively and believed Schwartz treated him in a very unprofessional and arrogant way. He conceded that he asked Mr. Schwartz "Why are you sweating me?" The defendant made these statements because he believed he was being

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¹ Schwartz was recalled to testify to provide some limited testimony that the defendant allegedly was "leaning in" and "moving his arms' when confronted by Schwartz.

harassed because he had been given permission to view a second movie while waiting for the first movie to start.

According to defendant, he was never formally asked by Schwartz, or any other employee or security, to leave the premises. Defendant also testified that Trooper Daniels grabbed him on the shoulder and was aggressive. According to defendant the officer handcuffed and took him to the Troop and told him, "You could have gone home tonight."

THE LAW

The State has a burden of proving each and every element of the offense beyond a reasonable doubt. 11 *Del. C.* §301, *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965). As established case law indicates "[A] reasonable doubt is not a vague, whimsical or merely possible doubt, but such a doubt as intelligent, reasonable, and impartial men may honestly entertain after a conscience consideration of the evidence or want of evidence in the case." *Matushefske*, 215 A.2d 445.

A reasonable doubt "means a substantial, well-founded doubt rising from a candid and impartial consideration of all the evidence or want of evidence." *State v. Wright*, Del. Gen. Sess., 79 A.2d 399 (1911).

The State also has the burden of beyond a reasonable doubt that jurisdiction and venue has been proven as elements of the offense. 11 *Del. C.* §232, See *James v. State*, Del. Supr., 377 A.2d 15 (1977); *Thorton v. State*, Del. Supr., 405 A.2d 126 (1979).

² Although the affidavit of probable cause and charging documents reference what appears a misdemeanor Menacing and Disorderly Conduct with the officer, no such charging documents were filed by the Attorney General alleging Misdemeanors in the presence of the investigating officer or against the officer. The Court also notes that 11 *Del. C.* §904(4) grants a peace officer or police officer to arrest without a warrant for a Misdemeanor committed "out of the officer's present and within the State for an misdemeanor [allegedly] involving physical injury or threat thereof or any misdemeanor involving illegal sexual contact or attempted sexual contact."

In determining whether the State has met its burden of proving each and every element of defense beyond a reasonable doubt, the Court may consider all direct and circumstantial evidence.

The Court notes as a trier of fact it is the sole judge of the credibility of each fact witness. If the Court finds the evidence to be presented in conflict, as in the instant record, it is the Court's duty to reconcile these conflicts, if reasonably possible to make one harmonious story. If the Court cannot do this, the Court must give credit to the portion of the testimony which, in the Court's judgment, is most worthy of credit and disregard any portion of the testimony in which in the Court's judgment is unworthy of credit. In performing this task, the Court takes into consideration the demeanor of each fact witness, the apparent fairness in giving their testimony, the opportunities in hearing and knowing the facts about which each fact witness testified, and any bias or interest each fact witness may have concerning the case.

OPINION AND ORDER

Based upon the testimony presented at trial, the Court finds that the State has proven the first count Misdemeanor Disorderly Conduct, 11 *Del. C.* §301(b) beyond a reasonable doubt. 11 *Del. C.* §301. There is no question and the testimony was unrebutted that that defendant addressed Schwartz with approximately four employees present with abusive and profane language while at Brandywine Parkway Regal Cinemas in violation of the statute and caused a risk of public inconvenience and alarm. The defendant allegedly used the words "F--- you" and other profanity when the manager, Mr. Schwartz, originally confronted him. Four employees were present.

As to the Menacing and Criminal Trespass the Court's role is determined whether a crime has been actually committed and proven beyond a reasonable doubt. 11 *Del. C.* §301. Shwartz

candidly admitted that he allowed the defendant to remain on the premises because he "wanted

to win him over." If a true crime had been committed in his presence and he felt threatened and

menaced and/or believed that the defendant committed the crime of criminal trespass and

menacing, the Court cannot reconcile the fact that Schwartz reinvited or acquiesced and let the

defendant remain on the premises to watch additional movies.

The testimony at best is equally balanced as to whether defendant committed these

crimes. 11 Del. C. §301.

In short, if the complainant truly believed a crime had been committed, why did he allow

the defendant to stay and watch additional movies? In addition, the evidence is equally balanced

as to whether the defendant was instructed to leave the premises. Absent these predicate

elements, the Court cannot adjudicate this defendant guilty.

The Court therefore adjudicates the defendant NOT GUILTY on the Menacing and

Criminal Trespass Count.

The Criminal Clerk is directed to set this matter for sentencing on the Disorderly Conduct

charge, 11 Del. C. §1301(b) at the earliest convenience of the parties and the Court.

IT IS SO ORDERED this 13th day of September, 2005.

John K. Welch

Associate Judge

/jb

Theresa Bleakly, Supervisor

CCP Scheduling

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